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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/256,647 02/23/99 CHU

G 19463-1

EXAMINER

TM02/0327

PATRICK J. FINNAN  
EPSTEIN, EDELL, SHAPIRO & FINNAN, LLC  
1901 RESEARCH BOULEVARD, SUITE 400  
ROCKVILLE MD 20850

SAFAVIAN, S

ART UNIT

PAPER NUMBER

2153

DATE MAILED:

03/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<b>Office Action Summary</b>	Application No. 09/256,647	Applicant(s) CHU ET AL.	
	Examiner Seyed M Safavian	Art Unit 2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claims 1-22 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- |  |  |
|--|--|
| 15) <input type="checkbox"/> Notice of References Cited (PTO-892)                            | 18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____   |
| 16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)        | 19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ | 20) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, 16-22, drawn to method for network performance monitoring for a plurality of user or client modules and each operates on separate machine and coupled to a server provider and further collecting data from the plurality of user modules includes performance datum relating to user experience with link to the server provider and for providing the test result to the server from the user module and cleansing the collected data to account for variable user configuration. , classified in class 709, subclass 224
  - II. Claim 10, drawn to a method of determining a path taken by packets between a source and destination in a packet-switched network via sending out a plurality of test packets and at least two test packets have different values for a time to live variable and further recording IP addresses to IP devices at which the test packets expired and sending a recording test packet to each IP that obtained to cause an IP device to record a path of the test packet and further analyzing the returned result of the recording test packet to determine the path taken from the packets between the source and the destination. classified in class 709, subclass 238.

- III. Claim 11-12, drawn to a method of measuring network performance in a distributed network by executing test on network via a test point and querying routers via a central console to determine router statistics and base on router statistics adjusting the result, classified in class 714, subclass 712.
- IIII. Claims 13-15, drawn to a method for monitoring a dial-up network and capturing dial-up parameters and obtain dial-up process data at client computer by hook function intercepting function call, classified in class 709, subclass 318.

2. The inventions are distinct, each from the other because of the following reasons: Inventions I-III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are unrelated because their utilities are different from each.

- a) Invention I has utility for monitoring the performance of plurality of user modules in a network system by collecting data from one performance datum executed by user and collecting data for user configuration.
- b) Invention II has utility for determining a path taken by a packet data between a source and destination by using test packets.

- c) Invention III has utility for measuring network performance in a distributed network by executing test on network via a test point and querying network routers via a central console to determine router statistics adjusting the result.
- d) Invention IIII has utility for monitoring a dial-up network and capturing dial- up parameters at the client computer.

3. Because these inventions are distinct for the reason given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purpose as indicated is proper.

4. A telephone call was made to Philip H. Albert on March 6, 2001 to discuss the restriction requirement of claims, Mr. Philip H. Albert requested written restriction.

5. Applicants are advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

**Conclusion**

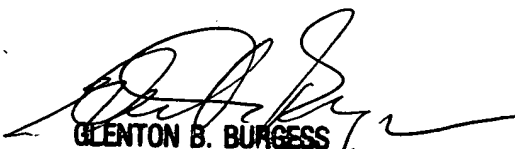
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seyed M Safavian whose telephone number is (703) 305-0081. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on (703) 305-4792. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7201 for regular communications and (703) 308-6606 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

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March 21, 2001

  
GLENTON B. BURGESS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100